

examiner show specifically which claim 2-8 recites a method where such control is not comprehended, and which claim 2-8 describes a different species.

Applicants further respectfully assert that the description of the embodiment of the invention as elected above is woven throughout the entire specification. However, the description starting on page 10 line 9 and ending on page 11 line 2 provides a succinct overview.

Applicants assert that restriction is not required by 35 U.S.C. § 121, as suggested in the office action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. § 121 "... the Commissioner *may* require the application to be restricted...." (emphasis added). Likewise, MPEP § 803 lists two criteria that must be present for restriction to be proper:

1. The invention must be independent or distinct; and
2. There must be a serious burden on the examiner if restriction is not required.

In searching the Group I claims, the class and subclass for the Group II claims will undoubtedly be searched, to ensure that no relevant art is overlooked. For this reason there is no significant burden on the examiner, and certainly no serious burden as required by MPEP § 803. In fact, maintaining the requirement for restriction not only burdens applicants with the additional costs associated with filing and prosecuting separate patent applications, but also requires the examiner to duplicate efforts by examining multiple applications of closely related inventions. Such practice not only wastes public and private funds and Patent Office resources, but also leads to the possibility of inconsistent examinations of closely related inventions. Accordingly, applicants respectfully request that the examiner reconsider and withdraw the restriction requirement.

In light of the foregoing, applicants respectfully submit that a full and complete response to the office action is provided herein, and request that the application proceed to examination.

In the event this response is not timely filed, applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any

other fees which may be due with respect to this paper be charged to deposit account 12-2355.

Sincerely,

LUEDEKA, NEELY & GRAHAM, P.C.


By:   
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2002.05.06  
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\* \* \*

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington DC 20231, on the date below.

2002.05.06  
Date

  
Rick Barnes, 39, 596

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